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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/713,001	11/17/2000	Jay S. Walker	00-069	7526

22927 7590 08/08/2002

WALKER DIGITAL
FIVE HIGH RIDGE PARK
STAMFORD, CT 06905

EXAMINER

TRAN, KHOI H

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 08/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/713,001

Applicant(s)

WALKER ET AL.

Examiner

Khoi H Tran

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3651

-- Th MAILING DATE f this communication appears on the cover sheet with the corresp ndence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 1-35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-27 and 34, drawn to a method of operating a vending machine, classified in class 700, subclass 232.
 - II. Claims 28-33 and 35, drawn to a vending machine, classified in class 221, subclass 2.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, another materially different apparatus can practice the process of dispensing products and offering information items. For example, a completely audio-activated or hands-free beverage dispenser could be used instead.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I: the embodiment wherein the information item is offered before receiving the payment;

Subspecies A: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is an audio file, and the product is a beverage;

Subspecies B: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is an audio file, and the product is a snack;

Subspecies C: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a video file, and the product is a beverage;

Subspecies D: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a video file, and the product is a snack;

Subspecies E: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a text file, and the product is a beverage;

Subspecies F: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a text file, and the product is a snack;

Subspecies G: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is an audio file, and the product is a beverage;

Subspecies H: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is an audio file, and the product is a snack;

Subspecies I: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a video file, and the product is a beverage;

Subspecies J: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a video file, and the product is a snack;

Subspecies K: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a text file, and the product is a beverage;

Subspecies L: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a text file, and the product is a snack;

Subspecies M: the receiving end of the selected information item is an address on a PDA, the information item is an audio file, and the product is a beverage;

Subspecies N: the receiving end of the selected information item is an address on a PDA, the information item is an audio file, and the product is a snack;

Subspecies O: the receiving end of the selected information item is an address on a PDA, the information item is a video file, and the product is a beverage;

Subspecies P: the receiving end of the selected information item is an address on a PDA, the information item is a video file, and the product is a snack;

Subspecies Q: the receiving end of the selected information item is an address on a PDA, the information item is a text file, and the product is a beverage;

Subspecies R: the receiving end of the selected information item is an address on a PDA, the information item is a text file, and the product is a snack;

Subspecies S: the receiving end of the selected information item is a memory device located at the vending machine, and the product is a beverage;

Subspecies T: the receiving end of the selected information item is a memory device located at the vending machine, the information item is an audio file, and the product is a snack;

Subspecies U: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a video file, and the product is a beverage;

Subspecies V: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a video file, and the product is a snack;

Subspecies W: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a text file, and the product is a beverage;

Subspecies X: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a text file, and the product is a snack;

Species II: the embodiment wherein the information item is offered after receiving the payment;

Subspecies A: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is an audio file, and the product is a beverage;

Subspecies B: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is an audio file, and the product is a snack;

Subspecies C: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a video file, and the product is a beverage;

Subspecies D: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a video file, and the product is a snack;

Subspecies E: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a text file, and the product is a beverage;

Subspecies F: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a text file, and the product is a snack;

Subspecies G: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is an audio file, and the product is a beverage;

Subspecies H: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is an audio file, and the product is a snack;

Subspecies I: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a video file, and the product is a beverage;

Subspecies J: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a video file, and the product is a snack;

Subspecies K: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a text file, and the product is a beverage;

Subspecies L: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a text file, and the product is a snack;

Subspecies M: the receiving end of the selected information item is an address on a PDA, the information item is an audio file, and the product is a beverage;

Subspecies N: the receiving end of the selected information item is an address on a PDA, the information item is an audio file, and the product is a snack;

Subspecies O: the receiving end of the selected information item is an address on a PDA, the information item is a video file, and the product is a beverage;

Subspecies P: the receiving end of the selected information item is an address on a PDA, the information item is a video file, and the product is a snack;

Subspecies Q: the receiving end of the selected information item is an address on a PDA, the information item is a text file, and the product is a beverage;

Subspecies R: the receiving end of the selected information item is an address on a PDA, the information item is a text file, and the product is a snack;

Subspecies S: the receiving end of the selected information item is a memory device located at the vending machine, and the product is a beverage;

Subspecies T: the receiving end of the selected information item is a memory device located at the vending machine, the information item is an audio file, and the product is a snack;

Subspecies U: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a video file, and the product is a beverage;

Subspecies V: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a video file, and the product is a snack;

Subspecies W: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a text file, and the product is a beverage;

Subspecies X: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a text file, and the product is a snack;

Species III: the embodiment wherein the information item is offered after the dispensing of the product;

Subspecies A: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is an audio file, and the product is a beverage;

Subspecies B: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is an audio file, and the product is a snack;

Subspecies C: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a video file, and the product is a beverage;

Subspecies D: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a video file, and the product is a snack;

Subspecies E: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a text file, and the product is a beverage;

Subspecies F: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a text file, and the product is a snack;

Subspecies G: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is an audio file, and the product is a beverage;

Subspecies H: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is an audio file, and the product is a snack;

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Subspecies I: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a video file, and the product is a beverage;

Subspecies J: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a video file, and the product is a snack;

Subspecies K: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a text file, and the product is a beverage;

Subspecies L: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a text file, and the product is a snack;

Subspecies M: the receiving end of the selected information item is an address on a PDA, the information item is an audio file, and the product is a beverage;

Subspecies N: the receiving end of the selected information item is an address on a PDA, the information item is an audio file, and the product is a snack;

Subspecies O: the receiving end of the selected information item is an address on a PDA, the information item is a video file, and the product is a beverage;

Subspecies P: the receiving end of the selected information item is an address on a PDA, the information item is a video file, and the product is a snack;

Subspecies Q: the receiving end of the selected information item is an address on a PDA, the information item is a text file, and the product is a beverage;

Subspecies R: the receiving end of the selected information item is an address on a PDA, the information item is a text file, and the product is a snack;

Subspecies S: the receiving end of the selected information item is a memory device located at the vending machine, and the product is a beverage;

Subspecies T: the receiving end of the selected information item is a memory device located at the vending machine, the information item is an audio file, and the product is a snack;

Subspecies U: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a video file, and the product is a beverage;

Subspecies V: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a video file, and the product is a snack;

Subspecies W: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a text file, and the product is a beverage;

Subspecies X: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a text file, and the product is a snack;

Species IV: the embodiment wherein the information item is offered as a package deal along with a product.

Subspecies A: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is an audio file, and the product is a beverage;

Subspecies B: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is an audio file, and the product is a snack;

Subspecies C: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a video file, and the product is a beverage;

Subspecies D: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a video file, and the product is a snack;

Subspecies E: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a text file, and the product is a beverage;

Subspecies F: the receiving end of the selected information item is an email address remotely located from the vending machine, the information item is a text file, and the product is a snack;

Subspecies G: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is an audio file, and the product is a beverage;

Subspecies H: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is an audio file, and the product is a snack;

Subspecies I: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a video file, and the product is a beverage;

Subspecies J: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a video file, and the product is a snack;

Subspecies K: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a text file, and the product is a beverage;

Subspecies L: the receiving end of the selected information item is a mailing address remotely located from the vending machine, the information item is a text file, and the product is a snack;

Subspecies M: the receiving end of the selected information item is an address on a PDA, the information item is an audio file, and the product is a beverage;

Subspecies N: the receiving end of the selected information item is an address on a PDA, the information item is an audio file, and the product is a snack;

Subspecies O: the receiving end of the selected information item is an address on a PDA, the information item is a video file, and the product is a beverage;

Subspecies P: the receiving end of the selected information item is an address on a PDA, the information item is a video file, and the product is a snack;

Subspecies Q: the receiving end of the selected information item is an address on a PDA, the information item is a text file, and the product is a beverage;

Subspecies R: the receiving end of the selected information item is an address on a PDA, the information item is a text file, and the product is a snack;

Subspecies S: the receiving end of the selected information item is a memory device located at the vending machine, and the product is a beverage;

Subspecies T: the receiving end of the selected information item is a memory device located at the vending machine, the information item is an audio file, and the product is a snack;

Subspecies U: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a video file, and the product is a beverage;

Subspecies V: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a video file, and the product is a snack;

Subspecies W: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a text file, and the product is a beverage;

Subspecies X: the receiving end of the selected information item is a memory device located at the vending machine, the information item is a text file, and the product is a snack;

Applicant is required under 35 U.S.C. 121 to elect a single disclosed **species in combination with a single subspecies** for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims appears to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. A telephone call was made to the office of Mr. Dean P. Alderucci on August 08, 2002 to request an oral election to the above restriction requirement, but Applicant's representative was not available.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

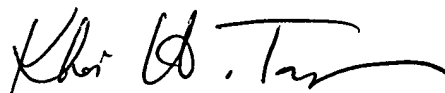
6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H Tran whose telephone number is (703) 308-1113. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (703) 308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and 7033057687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read 'Khoi H. Tran', with a stylized flourish at the end.

Khoi H Tran
Examiner
Art Unit 3651

KHT
August 7, 2002